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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,148	10/02/2003	Yehuda Einav	081627-0305072	6393
909	7590	06/15/2005	EXAMINER	
PILLSBURY WINTHROP SHAW PITTMAN, LLP			MEREK, JOSEPH C	
P.O. BOX 10500			ART UNIT	
MCLEAN, VA 22102			PAPER NUMBER	
			3727	

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/676,148

Applicant(s)

EINAV ET AL.

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2005.
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-23 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

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Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claim of U.S. Patent No. D496,531. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to write the present claims from the claim and drawings of the design patent.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Skillius (US 4,982,863). Regarding claim 1, the container is 2 with the locking element on the side walls 11a and the lid is 8a and 8 b and there is a handle 91a or 9b on each lid

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which locks under 11a. The upright position is a locked position. Regarding claim 2, the unlocked position is shown by the dotted lines in Fig. 2. The handle 9a or 9b is unlocked when it is angled as shown in Fig. 2. See also Col. 3, lines 13-28 where the action of the handles is described. Regarding claim 3, the lid is locked when the handle is stored in the recess in the lid. The inclined is a matter of orientation.

Claims 1-5, 13, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Hagen et al (US 6,237,765). Regarding claim 1, the base is seen in Fig. 1 as item 11, which has walls which have the locking member 60 and has a bottom wall and has an interior storage compartment. The lid is item 10 which has the handle 15. Regarding claim 2, the handle has an unlocked position and a locked position. Regarding claim 3, the upright is a matter of orientation. The handle is shown upright as seen in Fig. 3 which is a locked position. Fig. 6 shows the inclined position, which is also a locked position, and there is a position that is intermediate the two positions that is unlocked. Regarding claim 4, the handle has first and second arms as seen in Fig. 5 which define first and second recesses under items 54 and 55 which receive the locking member 60 there under. Regarding claim 5, the pivot 52 is the locating assembly. It is capable of locating the handle in the three described discrete positions. Regarding claim 13, see Fig. 5 where one pair of cover locking mechanisms is 54 and 55 at one end of the handle and the other end of the handle has another pair. Regarding claim 14, the locking mechanisms are generally L-shaped as seen in Fig. 5.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hagen et al (US 6,237,765) in view of admitted prior art. Regarding claim 12, in the previous office action the examiner took the position of official notice that it is well known to make handles of both plastic and metal. Applicant did not traverse the official notice. Applicant only argued that the claim was allowable for previously stated reasons. Since applicant did not traverse the official notice it is not admitted prior art. It would have been obvious to employ metal in the handle of Hagen et al to provide a strong and durable handle.

Response to Arguments

Applicant's arguments filed 1/11/05 have been fully considered but they are not persuasive. Applicant argues that in the container of Hagen et al the handle is not mounted in the lid. There is nothing in the claim that prevents item 10 of Hagen et al from being the lid and item 11 being the body. Item 11 has sidewalls which define a storage cavity.

Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

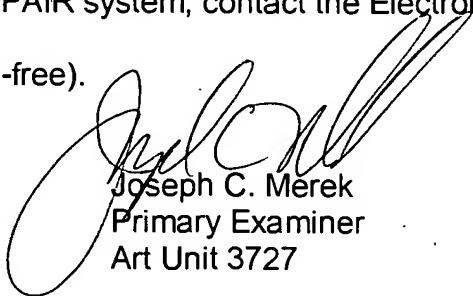
This is a non-final action due to the new grounds of rejection.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Berry (US 1,859,228) cited for teaching a locking handle on a container where the lid is hinged on the container body. Hoffmann et al (US 2,879,916) is cited for teaching a container with a locking handle where the lid is hinged to the body.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is 571 272-4542. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Joseph C. Merek
Primary Examiner
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